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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the combined fifth and sixth periodic reports of Costa Rica

Addendum

Information provided by Costa Rica in follow-up to the concluding observations*

[17 January 2014]

* This document is being issued without formal editing.

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Introduction

1. This report is in response to the request made by the Committee on the Elimination of Discrimination against Women (CEDAW) in the course of its consideration of the combined fifth and sixth periodic reports of Costa Rica (CEDAW/C/CRI/5-6) at its 978th and 979th meetings on 11 July 2011 (see CEDAW/C/SR.978 and 979).

2. On that occasion, the Committee asked the Government of Costa Rica "to provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraphs 15 and 33 above" (para. 46), which paragraphs relate respectively to the national mechanism and to health.

3. Before taking up the aforementioned paragraphs, the Government would like to make the Committee aware of one of the measures taken to give effect to all of the Committee's recommendations. After the defence of the fifth and sixth reports, an Inter-Agency CEDAW Monitoring Platform was set up comprising representatives of various public institutions, in order to establish a follow-up system to provide regular information on the application of CEDAW as a whole.

4. The Platform's work is carried out through liaison officers directly appointed by the highest institutional authority, who work within their respective coordination mechanisms to systematize, analyse and forward relevant information. They also play the role of spokespersons regarding the guidelines and enquiries issued by INAMU, which acts as the clearinghouse for reports to the Committee. Because guidelines and enquiries are formulated in conjunction with the Platform, the process is a highly participatory one, creating buy-in among participating institutions and enabling them to generate synergies.

5. The Platform has been active since November of 2012, coinciding with the creation within INAMU of an institutional experts' subcommittee, made up of representatives of each of the institution's strategic areas, whose mandate is to methodically conduct the process of drawing up Country Reports and to provide institutions with technical advice and support throughout the reporting process. Since that time, the Subcommittee and Platform have both been continuously working, in particular, to disseminate and raise awareness of the Committee's recommendations and the general provisions of CEDAW within the Platform—which plays the same role vis-à-vis its constituent institutions—to formulate methodologies for the collection and systematization of information, and to develop critical paths setting out the main issues and challenges for the Inter-Agency Platform in the lead-up to the presentation of the Country Reports.

6. The objective of the work methodology described above has been to strengthen institutions' process of assimilating CEDAW into their regular functions, incorporating the Convention into their strategic planning, and maintaining accountability for the results of the actions taken.

7. In what follows we shall provide the information requested of Costa Rica by the Committee on the Elimination of Discrimination against Women (CEDAW) in para. 46 of its general observations, in the context of its consideration of the combined fifth and sixth periodic reports (CEDAW/C/CRI/5-6).

On the National Mechanism

8. In para. 15 of its general observations on Costa Rica's report (CEDAW/C/CRI/5-6), the Committee "urges the State party to consider reassigning ministerial rank to the Executive President of the National Institute for Women with a view to making the Institute more visible and effective, enhancing its capacity to influence the formulation, design and implementation of public policies, and strengthening its coordination role at all levels of government, in particular at the ministerial level."

9. The Act on the National Institute for Women (Act No. 7801 of 30 April 1998), provides, in article 14, that

> *"(...) the Executive President may be freely appointed and removed by the Governing Council. He or she shall hold office for a period of four years. In the event of the Executive President's temporary absence, he or she shall be replaced by the vice-president of the Board of Directors. Where the absence is permanent, the Board shall appoint a replacement to serve the remainder of the Executive President's term as stipulated in this Act.*
>
> *Where a ministerial-rank official is appointed with responsibility for women's affairs, that official may also act as Executive President of the Institute (...)".*

The Act also provides that such official may be granted the rank of a minister without portfolio.

10. The reason for the wording of the final paragraph of the article is that under the Constitution, the incumbent of the Presidency of the Republic may *"freely appoint and remove Cabinet Ministers"* (Art. 139.1 of the Constitution of Costa Rica).

11. As indicated in Act No. 7801, INAMU, in its role of national mechanism, is designed to manage, formulate, coordinate and oversee other State agencies' programmes and actions relating to the status and condition of women, with a clear and effective management scheme, with a State-level management body, and with the participation of social and academic organizations, achieved through the establishment of an advisory body. It controls its own assets and enjoys administrative independence and proper classification of office-holders, so that it can hire the specialized staff required to achieve its purposes.

12. Under Agreement No. 693-P of 16 October 2012, issued by the President of the Republic, Laura Chinchilla Miranda, ministerial rank was granted to the Executive President of the National Institute for Women (INAMU), Ms Maureen Clarke Clarke, who took office immediately. This gave the national mechanism additional weight in the Cabinet, in line with the CEDAW Committee's recommendation.

13. The Governing Council is the highest constitutional body of State administration, consisting of the President of the Republic—who chairs it—and her Ministers. We trust the presence of the Minister for the Advancement of Women at this highest level will strengthen INAMU's guiding role in the achievement of equality between women and men, while improving compliance with the obligations undertaken under international and regional legal instruments such as the United Nations Convention on the Elimination of All Forms of Discrimination against

Women as well as observance of the Committee's recommendations and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, and fulfilment of the Millennium Development Goals, the commitments made in the Beijing Platform for Action and other international commitments for substantive equality of women.

Because the person in charge of the national machinery for the advancement of women sits on the Governing Council, with ministerial rank, matters related to women's rights and equality are now decided at the highest political level. The effects thereof have been seen in a number of areas, particularly in the area of violence against women, economic rights and female detainees. The Governing Council has reviewed status reports on women killed on account of their gender—femicides—and an emergency plan to prevent such crimes (January 2013). Similarly, reports are produced and exchanges fostered on strategic INAMU projects relating to women's economic rights; some concrete examples are FOMUJERES (a non-reimbursable fund in support of women's productive activities and their organization) and SIGIEG, the Equality and Equity Management System (Seal of Equity).

It should be added that on 15 March 2012, Bill No. 18399 was tabled in the Legislative Assembly, which seeks to make the National Institute for Women (INAMU) "*an institutional platform for the provision of technical and financial support to a Ministry of Gender Equality and Equity, to promote gender mainstreaming in Costa Rica's public and private institutions*".

INAMU appeared before the Legislative Assembly's Special Standing Committee on Women, whose comments on the bill had been solicited, highlighting the importance of strengthening its guiding role in equality for women, in line with CEDAW recommendations.

INAMU did however express their concern with the bill, since the ministry so created was not granted any powers. In that regard, the Legislative Assembly's Technical Services Department pointed out that legally speaking, "the powers of any ministry that may be created cannot be set out in the organic law of an autonomous institution", as the two bodies are of different legal natures.

According to the Constitutional Chamber's interpretation of constitutional rule 188 above, "the executive branch cannot act as the head of the decentralized body; it cannot control it or set limits on its activity for reasons of expediency; nor can it act as the managing director of the autonomous body by imposing guidelines or basic programmes" (Constitutional Vote 6256-1994).

An INAMU proposal is now being considered by the legislative branch whereby article 14 of its incorporating legislation would be amended to specify that "the Executive President of INAMU shall be appointed by the President of the Republic to the rank of Minister for the Status of Women and Equality, to exercise stewardship in that area", subject to existing constitutional limitations.

On the health recommendation

In para. 33 of its general observations on Costa Rica's report (CEDAW/C/CRI/5-6), the Committee stated:

33. The Committee urges the State party to:

(a) Prioritize the adoption of the amendment to the General Health Act, which envisages the introduction of a chapter devoted to sexual and reproductive rights, in accordance with article 12 of the Convention and the Committee's general recommendation No. 24 (1999) on article 12 of the Convention (women and health);

(b) Consider lifting the ban on in vitro fertilization and adopting legislative measures aimed at facilitating and expanding women's right to decide freely and responsibly on the number of their children in accordance with article 16(e) of the Convention, and ensure access to assisted reproductive services, including in vitro fertilization, in line with the recommendations of the Inter-American Commission on Human Rights in 2010;

(c) Elaborate clear medical guidelines on access to legal abortion and disseminate them widely among health professionals and the public at large;

(d) Consider reviewing the law relating to abortion, with a view to identifying other circumstances under which abortion could be permitted, such as abortions in cases of pregnancies resulting from rape or incest;

(e) Take measures aimed at making accessible and available technologically advanced contraceptive methods to women.

On the adoption of the amendment to the General Health Act, which envisages the introduction of a chapter devoted to sexual and reproductive rights

Bill No. 16,887, entitled "*Addition of a New Chapter III, on Sexual and Reproductive Health Rights, to Title I of Book I of the General Health Act, Act No. 5,395 of 30 October 1973*", to amend the General Health Act, was tabled on 22 November 2007. In 2011 and 2012, the legislative committees responsible for discussion of the bill held many hearings involving public institutions and social organizations. Six years after it was first tabled in the Legislature, however, it has still not been enacted.

The bill results from a joint effort between institutions and civil society organizations, in the absence of coherent and unified rules on sexual and reproductive health, based on a rights approach and in line with international legal instruments and recommendations issued by agencies of the United Nations System.

Members of the Legislature were told that for the first time a bill concerned with health in general was taking an accurate reading of people's real situation and recognizing the special needs and demands of certain populations that require distinct and specific sexual and reproductive health care, e.g., teenagers, people with disabilities and older persons, groups that are also the most disadvantaged and have the most unequal access.

In 2012, a number of public institutions, such as INAMU, the Ministry of Health and the Office of the Ombudsman, as well as social organizations, appeared before the Legislative Assembly's Human Rights Commission to propose improvements to the bill and provided qualitative and quantitative information to

show the urgent need to approve it. The bill is now before a subcommittee of the Legislative Assembly's Human Rights Commission, for its review and comments.

On the possibility of lifting the ban on in vitro fertilization and adopting legislative measures aimed at facilitating and expanding women's right to decide freely and responsibly on the number of their children

As regards the lifting of the ban on in vitro fertilization in Costa Rica and the adoption of legislative measures to facilitate and expand women's right to decide freely and responsibly the number of their children, the Inter-American Court of Human Rights, in its judgment of 28 November 2012,[1] ruled that:

> "*The State must adopt, as soon as possible, appropriate measures to annul the prohibition to practice IVF, so that those persons who wish to use this assisted reproduction technique can do so without any impediment to the exercise of the rights that were declared violated in this Judgment. The State must* [within six months] *provide information on the measures adopted in this regard, in accordance with paragraph 336 of this Judgment.*"

In view of the judgement of the Inter-American Court of Human Rights, in early January 2013 the Minister of Health formed an interdisciplinary committee of officials of her Ministry which was to endeavour to investigate, research and develop proposed regulations in line with that judgement. The discussion included an objective study and comparison of other countries' IVF legislation: that of Spain, Norway, Germany, India and the UK, to name only a few. It also took into account the considerations that led the Inter-American Court of Human Rights to issue its judgment of 28 November 2012.

The interdisciplinary committee drew up a draft bill on in vitro fertilization and human embryo transfer embryos (IVF-ET), which was discussed and analysed at a workshop organized by the Ministry of Health in February 2013; subsequently, more contributions were received from medical and legal experts and representatives of various non-governmental organizations and public institutions interested in the matter.

Such was the background to the tabling by the Executive Branch, on 8 April 2013, of Bill No. 18,738 to regulate the use of the technique of in vitro fertilization and embryo transfer (IVF-ET) in the treatment of infertility.

The bill was referred for review and reporting to the Legislative Assembly's Social Affairs Committee; as of June 2013 it had been referred as well to public institutions, universities, professional associations and NGOs.

In the Ministry of Health's report DPEEAS-103-13 of May 2013 report, it was indicated that treatment protocols for in vitro fertilization in health services were being developed.

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[1] I/A Court H. R., Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica (Preliminary objections, merits, reparations and costs). Judgment of 28 November 2012. Series C, No. 257.

On the production and dissemination of medical guidelines on access to legal abortion

Costa Rica's current gender equality and equity policy (PIEG) requires the institutions responsible for various actions under the policy to issue progress reports. One such action is "design and approval of a guide or protocol on therapeutic abortion". In its 2012 report, the Costa Rican Social Security Fund reported that a "Technical Treatment Guide for Therapeutic Abortion" had been completed. It was then submitted to the appropriate institutional authorities and is awaiting approval.

On the possibility of reviewing the law relating to abortion, with a view to identifying other circumstances under which abortion could be permitted

During the current reporting period, no amendments to the law relating to abortion have been put forward by the competent State authorities.

On the adoption of measures aimed at making technologically advanced contraceptive methods accessible and available to women

In public institutions' and social organizations' presentations at the hearings of the Legislative Assembly's Human Rights Commission on Bill No. 16,887 ("*Addition of a New Chapter III, on Sexual and Reproductive Health Rights, to Title I of Book I of the General Health Act, Act No. 5395 of 30 October 1973*"), proposals were made for wording that would require health institutions to provide up-to-date, science-based information on methods of contraception, access to and availability of safe, effective and modern methods of contraception and protection, and guarantee that these would be made available as required at each stage of human development and in accordance with the specific needs of each population. A universal right to access to safe, modern and effective methods of contraception and protection would also be recognized.

As noted above, the bill has been submitted to the Legislative Assembly's Human Rights Commission for review and comments.

Again, the gender equality and equity policy (PIEG) provides as one of its strategic actions "the review and updating of the Costa Rican Social Security Fund's policy on the provision of contraceptives". In its 2012 progress report, the Fund noted that the review of its practices in supplying products for contraception and protection against pregnancy and sexually transmitted diseases had been completed as regards adolescents, and would be subsequently expanded with a view to nationwide treatment for women. Progress has also been made on drafting wording for an application to expand contraceptive methods.

For its part, the Ministry of Health reports that it has sent the competent authorities, for review and update in 2013, its guidelines on maternal and child health and family planning.